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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: FIRSTENERGY CORP. CIVIL ACTION NO.
SECURITIES LITIGATION 2:20-cv-3785

THIS DOCUMENT RELATES TO:
ALL ACTIONS.

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HEARING HELD BEFORE
SPECIAL MASTER SHAWN JUDGE

Thursday, November 2, 2023
11:02 A.M.

Taken remotely via Zoom videoconference

REPORTER: PAMELA S. GREENFIELD, CRR, RDR

Job No. 6296570

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P R O C E E D I N G S

3

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SPECIAL MASTER JUDGE: All

5

right. Today's date is November 2nd, 2023.

6

We're here regarding In Re: FirstEnergy

7

Corp. Securities Litigation status conference

8

with the special master and all parties

9

including the movant, Non-Party Ebony

10

Yeboah-Amankwah. It's Case Number

11

2:20-cv-3785.

12

Today we're going to address the

13

motion for protective order, ECF Number 552.

14

I received that yesterday through the docket

15

and by email. I have read the accompanying

16

memorandum in support and I have also read

17

what I will refer to as plaintiffs' email

18

brief submitted by Mr. Forge yesterday at

19

7:36 p.m. as well as the attachments

20

submitted with that matter.

21

Traditionally I would ask that

22

people not submit an email brief to me unless

23

requested; although Mr. Forge, you were very

24

frustrating last night because I found it

25

helpful, and so reluctantly I'd like to

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1 admonish you but I also probably would have
2 asked you to give me something like this
3 anyway.

4 Let's jump right into the motion
5 and then I have a few comments I'll make at
6 the end regarding the motion. So, counsel,
7 if you would enter your appearance.

8 MS. LAPE: Marcie Lape from
9 Skadden Arps on behalf of Non-Party Ebony
10 Yeboah-Amankwah.

11 SPECIAL MASTER JUDGE: Mr. Forge.

12 MR. FORGE: Jason Forge on
13 behalf of the class plaintiffs.

14 SPECIAL MASTER JUDGE: Ms. Lape,
15 whenever you're ready.

16 MS. LAPE: On behalf of our
17 client, Ebony Yeboah-Amankwah, we appreciate
18 the opportunity to be heard this morning. We
19 had hoped that this would be a matter that we
20 would resolve among the parties but that
21 wasn't the case.

22 Ms. Yeboah-Amankwah's motion is
23 really quite straightforward. She is a
24 non-party who is set to give a two-day,
25 18-hour deposition next Tuesday and

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1 Wednesday. She's a former employee of
2 FirstEnergy who served in a number of roles
3 in the legal department over her career
4 including as the general counsel at the time
5 of the Householder indictment. In that role
6 when the company had its initial internal
7 investigation following the indictment,
8 Ms. Yeboah-Amankwah had company oversight of
9 that. She participated in interviews. She
10 reviewed key documents and she prepared in
11 connection with outside counsel legal
12 briefings that went to the board of
13 directors. That participation that
14 Ms. Yeboah-Amankwah had in the internal
15 investigation is at the heart of the
16 privilege dispute that is now pending before
17 the Special Master here and when the motion
18 to compel remained pending in mid October we
19 reached out to plaintiffs counsel to inquire
20 about whether it was appropriate to move
21 forward with Ms. Yeboah-Amankwah's deposition
22 planned for November 7th and 8th in light of
23 the pending privilege dispute.

24 It was clear to us that a ruling
25 on the pending motion to compel would have a

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1 material affect on the discoverability of
2 information in Ms. Yeboah-Amankwah's
3 deposition.

4 We also understood that
5 plaintiffs' requested relief included the
6 production of additional documents which very
7 well likely would involve Ms. Yeboah-Amankwah
8 as well as an order that all witnesses be
9 ordered to answer both past and future
10 questions related to the internal
11 investigation. Again, issues that would
12 really affect the testimony of
13 Ms. Yeboah-Amankwah.

14 Plaintiffs initially indicated to
15 us that they wanted to wait until after a
16 ruling on the pending motion in order to
17 determine whether or not to move forward with
18 Ms. Yeboah-Amankwah's deposition but the time
19 kept getting closer and closer and so we
20 reached out again requesting a call and
21 expressing our concern about moving forward
22 and what we told plaintiffs -- and you've
23 seen this -- is that we have concerns that if
24 we move forward when the decision is not
25 final, that there could be a possibility that

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1 Ms. Yeboah-Amankwah would be forced to sit
2 for a second deposition, and as a non-party
3 witness who is already being forced to come
4 in and give testimony over two days for 18
5 hours, it's a extremely burdensome to be
6 forced to come back and answer questions
7 given that this is plaintiffs' choice to move
8 forward with a deposition notwithstanding the
9 pending privilege dispute.

10 Plaintiffs declined our request
11 to stay the deposition and also declined our
12 request for a call, so we offered a
13 compromise that if they wanted to move
14 forward with the deposition, we would agree
15 to do so but only if we had an agreement from
16 the movants to the motion to compel that they
17 would not then ask to reopen a deposition to
18 elicit testimony related to those issues that
19 are at the heart of the privilege dispute
20 before the Special Master.

21 Plaintiffs again declined the
22 offer leaving us no choice but to file the
23 motion to compel. We need to guard against
24 the possibility that Ms. Yeboah-Amankwah, a
25 non-party, would be forced to sit for a

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1 second deposition here.

2 Now, requiring her to do, sit for
3 that deposition just because plaintiffs want
4 to move forward notwithstanding the
5 uncertainty of this discovery issue is unduly
6 prejudicial to Ms. Yeboah-Amankwah, it's
7 burdensome and it's improper and as the case
8 that we cited in our motion shows In Re:
9 Subpoena of Wang, it's not, there's
10 absolutely good cause here to stay her
11 deposition until this privilege issue is
12 resolved.

13 I want to just quickly address
14 the points that Mr. Forge raised in his email
15 yesterday because I think there are a lot of
16 inaccuracies in those points.

17 SPECIAL MASTER JUDGE: Before
18 you do, if I could interrupt for just a
19 moment: Tell me your position, everyone's
20 going to get a decision on the privilege
21 issue Monday morning.

22 How does that affect your motion?

23 MS. LAPE: Well, I don't know
24 what that privilege decision is going to be,
25 so there's a couple things.

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1 So Monday morning's the day
2 before her deposition.

3 If you were to rule that
4 FirstEnergy does not have privilege or has
5 waived its privilege, Ms. Yeboah-Amankwah is
6 certainly not prepared to testify today.
7 She's not prepared to testify on the very
8 next day over matters related to the internal
9 investigation. She was separated from the
10 company in October of 2020. It's three years
11 later, so she does not have access to any
12 materials that were from that time period.
13 She would not have reviewed those materials.

14 She would, nor would plaintiffs
15 have those materials to be ready to ask
16 questions about the internal investigation.

17 If the ruling was against the
18 movants, I understand that there is still a
19 21-day time period in which the plaintiffs
20 could object and that decision may or may not
21 be overturned and then we could be in the
22 same position we are today where there's an
23 uncertainty regarding the discoverability of
24 the information that she has that FirstEnergy
25 contends is privileged related to the

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1 internal investigation.

2 I think that the most logical
3 situation here would be to stay her
4 deposition until after there is a final
5 decision in this court, so until after the
6 time period to object and there is a ruling
7 by the District Court on that.

8 SPECIAL MASTER JUDGE: So after
9 the 21-day period?

10 MS. LAPE: After the 21-day
11 period, yes.

12 Now, my understanding is that the
13 parties are discussing an end of fact
14 discovery cutoff of around April which is
15 five months from now, so this is all
16 secondhand knowledge of course because we're
17 not a party to the action so aren't privy to
18 all of the information, but my understanding,
19 my expectation would be that there would
20 still be sufficient time to have
21 Ms. Yeboah-Amankwah's deposition, to do any
22 follow-up necessary discovery, and we've
23 committed that Ms. Yeboah-Amankwah will
24 promptly meet and confer and be flexible with
25 her dates in resetting that deposition.

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1 SPECIAL MASTER JUDGE: Okay.

2 Anything else you care to add?

3 MS. LAPE: The only other thing
4 I would add, and it's not my job to protect
5 FirstEnergy's privilege by any means, but
6 another thought that I had was that if you
7 were to rule in favor of the movants on
8 Monday and FirstEnergy sought to appeal, it
9 would be unlikely that a stay would be in
10 effect before the Tuesday deposition, which
11 could create some difficulties for the
12 company as well.

13 SPECIAL MASTER JUDGE: Talk to
14 me about your request for alternate relief
15 that if the deposition would be allowed to
16 proceed that you want to preclude plaintiffs
17 from reopening the deposition.

18 MS. LAPE: Well, this was a very
19 narrow compromise that we tried to develop in
20 order to move forward with the deposition as
21 plaintiff seemed to want to do.

22 It's not that under no
23 circumstances if there's good cause a party
24 could ever reopen the deposition. That's not
25 what we're asking for.

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1 What we're asking for is simply
2 that because plaintiffs desired to move
3 forward, notwithstanding that there's five
4 months of discovery time period left and
5 notwithstanding that there's this privilege
6 dispute, that then they should bear the
7 burden of any prejudice that results from
8 that decision to move forward and that would
9 be simply that if Ms. Yeboah-Amankwah is
10 asked about questions related to the internal
11 investigation that FirstEnergy contends are
12 privileged, that plaintiff should not
13 thereafter be able to reopen the deposition
14 and ask those privileged questions about the
15 internal investigation if a decision is later
16 determined that there is no privilege over
17 the internal investigation.

18 Now, plaintiffs are correct that
19 we did not find authority on point that
20 granted this kind of relief but I will say
21 that in the case that we cited in our motion,
22 the In Re: Subpoena of Wang case, that's
23 precisely what the movant did there: The
24 movant asked for the stay until the court
25 determined a privilege dispute but said but

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1 in the alternative, if the court's not
2 inclined to grant the stay, then we would ask
3 you to please issue an order that they would
4 not be able to reopen the deposition in order
5 to ask questions related to this privileged
6 matter after the fact because they're making
7 a decision to move forward.

8 Now, the court in that case
9 declined to even consider the alternative
10 argument because they determined there was in
11 fact good cause to issue the stay given the
12 pendency of the privilege dispute.

13 SPECIAL MASTER JUDGE: I got to
14 say that makes very little sense to me but I
15 think I understand, I understand the
16 argument. I'm not surprised you didn't find
17 a lot of case law supporting it out there
18 but...

19 MS. LAPE: Well, and I think
20 it's because, you know, first this is a very
21 unique fact pattern so it's really trying to
22 find a needle in a haystack as far as having
23 a deposition of a key employee involved in an
24 issue that there's a privilege dispute
25 pending over, so it's really a needle in the

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1 haystack and so where it did come up, you
2 know, we saw the stay being issued.

3 SPECIAL MASTER JUDGE: Okay. I
4 appreciate that. Before I interrupted you,
5 you were going to pick apart Mr. Forge's
6 email objections.

7 Do you want to address that or
8 are some of the points you were going to say
9 moot in light of the decision I promised on
10 Monday?

11 MS. LAPE: I don't believe, I
12 think certainly there are some points that
13 I'd like to respond to that would not be moot
14 regardless of your decision.

15 SPECIAL MASTER JUDGE: Go ahead.

16 MS. LAPE: The first is that
17 Ms. Yeboah-Amankwah is not the highest
18 ranking legal employee involved in the events
19 concerning Mr. Randazzo. In fact she's the
20 third highest ranking legal employee in this
21 case.

22 We understand also that
23 plaintiffs recently agreed to move the
24 deposition of the highest ranking legal
25 employee, who was Leila Vespoli, in part

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1 because of this pending privilege dispute and
2 the possibility that there could be
3 additional documents that are produced
4 related to the allegations.

5 Second, another inaccuracy is
6 that Ms. Yeboah-Amankwah did not agree to the
7 November 7th and 8th deposition dates while
8 the motion to compel was pending.
9 Ms. Yeboah-Amankwah was served the subpoena
10 on June 22nd and the docket reflects that the
11 motion to compel was filed on June 30th after
12 she had agreed to those deposition dates.

13 Again we understand that with an
14 expected April deadline there would be no
15 prejudice to plaintiffs if the deposition is
16 stayed until there's a final privilege
17 ruling.

18 Fourth, again, our requested
19 relief, alternative relief, first it's not
20 the primary relief that we seek and, second,
21 it really is quite narrow and it just focused
22 on the specific subject matter at the heart
23 of the motion to compel which is whether or
24 not FirstEnergy's internal investigation is
25 privileged. We are not asking for a blanket

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1 refusal to allow a reopening of the
2 deposition if there's good cause shown.

3 Fifth, we feel like plaintiffs'
4 offer to try to minimize the burdens to
5 Ms. Yeboah-Amankwah if there would be a
6 second deposition are insufficient to
7 overcome the well-established principle that
8 bars non-party witnesses from sitting for
9 multiple-day depositions. Federal Rule of
10 Civil Procedure 45 really requires that a
11 party not place an undue burden on a
12 non-party, and finally --

13 SPECIAL MASTER JUDGE: Explain
14 to me in detail what the burden would be
15 here.

16 MS. LAPE: The burden for
17 Ms. Yeboah-Amankwah?

18 SPECIAL MASTER JUDGE: Yes.

19 MS. LAPE: Well, the deposition
20 in the first instance here, as you know, is
21 quite rare to have a two-day deposition with
22 18 hours multiple parties asking her
23 questions.

24 Ms. Yeboah-Amankwah has, is not
25 employed by FirstEnergy. She's the vice

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1 president of compliance and ethics at another
2 publicly traded company, so she is already
3 taking off significant time from work in
4 order to prepare for the deposition.

5 SPECIAL MASTER JUDGE: How much
6 time?

7 MS. LAPE: Well, probably it
8 will be a full week between prep sessions and
9 the two days of deposition, so five full days
10 taking off from work already for the two-day
11 deposition now and then if she's required to
12 sit for a second deposition and there's
13 additional documents that are produced and
14 that will require additional topics that she
15 can be questioned about, that will require us
16 to prepare her once again and for her to take
17 off additional time from her job.

18 SPECIAL MASTER JUDGE: Has she
19 already sat for several days of prep?

20 MS. LAPE: She has sat for some
21 prep sessions and we have additional prep
22 sessions set for the next couple days.

23 SPECIAL MASTER JUDGE: Okay. Go
24 ahead. I'm sorry I interrupted you.

25 MS. LAPE: No, that's fine.

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1 And then the final, just to
2 address Mr. Forge's offer of moving the
3 deposition to November 29th or 30th or
4 December 1st, you know, while we appreciated
5 that offer, we felt like it was a band-aid
6 approach here given the ability to object to
7 any decision and the uncertainty of when a
8 decision would come out.

9 We did not believe that that
10 would cover that 21-day objection period and
11 give an opportunity for there to be a final
12 court order here.

13 SPECIAL MASTER JUDGE: All right.
14 Thank you.

15 MS. LAPE: Thank you.

16 SPECIAL MASTER JUDGE: Mr. Forge.

17 MR. FORGE: Thank you,
18 Mr. Judge. I'll start by debunking the
19 attempted debunking of the email.

20 And I'll just go in reverse order
21 of what counsel is discussing.

22 I really appreciate the way you
23 get to the point on these matters with your
24 questions and I think it's clear from the
25 responses regarding the burden that there is

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1 no threat of a unique burden here with this
2 witness.

3 She has already been questioned
4 by one governmental entity regarding some of
5 her conduct with FirstEnergy. Clearly she was
6 prepped for that. She sat through a
7 deposition there.

8 She's -- counsel has acknowledged
9 that she's already had some days, she was
10 vague about how many, to prep for this
11 deposition and the reality is that if she
12 doesn't want to prepare, she doesn't have to
13 prepare.

14 If she doesn't recall the answer
15 to a question, that is a perfectly acceptable
16 response to a question.

17 I don't want to butcher Mark
18 Twain's quote but I know to paraphrase it,
19 it's something along the lines of as long as
20 you tell the truth, you don't have to
21 remember anything. And that's all she has to
22 do is tell the truth.

23 If the truth is she doesn't
24 remember the answer to a question, that's
25 totally acceptable.

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1 Counsel remarked that this is
2 quite rare, what is going on, as far as she
3 has a two-day deposition and it is out of the
4 ordinary, but this case is out of the
5 ordinary. It is the largest public
6 corruption scheme in the history of the State
7 of Ohio and one of the largest in the
8 country's history and quite frankly
9 Ms. Amankwah was at the heart of it. She was
10 FirstEnergy's chief ethics officer for much
11 of the period of this conduct, and that has
12 nothing to do with the internal
13 investigation. It does have everything to do
14 with her engaging in misconduct herself, and
15 we have emails to that effect. She
16 unquestionably conspired to conceal an
17 arrangement with Sam Randazzo.

18 That is probably one of the
19 reasons why counsel waited until the midnight
20 hour to file their motion for protective
21 order, so we couldn't provide you with the
22 email evidence in which she is openly
23 discussing structuring payments to
24 Mr. Randazzo to avoid signature requirements
25 at FirstEnergy, she is openly discussing ways

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1 that they can avoid having to disclose side
2 agreements and basically payoffs with
3 Mr. Randazzo and openly discussing keeping
4 the relationship with Mr. Randazzo off
5 budget.

6 So we are not talking about a
7 completely disinterested third party. She is
8 at the eye of this hurricane and that has
9 nothing to do with the post-arrest internal
10 investigation and because she was -- and so
11 in terms of her role, she was the highest
12 ranking member of the legal department that
13 was directly dealing with this issue.

14 First of all, for some of the
15 period she was literally the highest ranking
16 member of the legal department, she was the
17 general counsel; but even for the period
18 before she was the general counsel, even when
19 you have a Mr. Reffner or Ms. Vespoli, who
20 were superior to her, they weren't the ones
21 dealing directly with Sam Randazzo. She was.

22 So I, frankly I believe that
23 you'll see why I disagree with Mr. Jones' and
24 Mr. Dowling's defense, I think it will come
25 into much sharper focus with this witness

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1 because you and the jury will eventually see
2 just how integrally involved and how
3 complicit the chief ethics officer was at
4 FirstEnergy with much of this conduct which I
5 believe, respectfully, all jurors will find
6 to be misconduct, you know, what she was
7 engaged in.

8 So she is, she was the highest
9 ranking member of the in-house legal team
10 involved in directly dealing with Sam
11 Randazzo.

12 Regarding the timing of things,
13 even counsel's description confirms that the
14 subpoena was June 22nd. The motion was
15 submitted on June 30th. She still had two
16 days to object to the timing of the
17 deposition. Of course she had months after
18 that to object. There were discussions about
19 the location. Never once raised a request to
20 postpone or wait until the decision; but
21 thankfully you've exposed the hollowness of
22 that argument because you've told us the
23 decision is coming out on Monday.

24 So whether they want to site the
25 In Re: Subpoena to Wang or any other

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1 argument, the decision will be made Monday.

2 Counsel is wrong again, the
3 deposition is not starting Monday. The
4 deposition starts Tuesday. That is after the
5 decision.

6 Again, this was withheld from you
7 but now it's out in the open: We offered to
8 move the deposition three weeks, a little
9 over three weeks; and rather than engage,
10 rather than accept that offer, which would
11 fully address every single point that she
12 made, they just went silent and then waited
13 until the midnight hour to file the motion
14 for protective order so I think that sheds a
15 lot of light on what the real intentions are
16 here, which is to completely disrupt what is
17 not just plaintiffs' litigation and discovery
18 plan but also the discovery plan for
19 Defendants Jones and Dowling because we have
20 a number of depositions set up already.

21 A number of those depositions
22 include Ms. Yeboah-Amankwah's former
23 subordinates. We need her deposition
24 testimony first and then we're going to
25 depose them. That is our prerogative to

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1 schedule these depositions as we deem to be
2 in the best interest of the class. Counsel
3 does not address at all the need for
4 follow-up discovery and while it's not her
5 job to respect our need for follow-up
6 discovery, it is my job and it is completely
7 impractical to move this deposition into 2024
8 which, by the way, the first two months have
9 already gotten pretty crowded. We would be
10 talking about a, needing as late as March of
11 2024 deposition and that will make it
12 impossible for us to do follow-up discovery,
13 again for the highest ranking member of the
14 in-house legal team dealing directly with Sam
15 Randazzo.

16 SPECIAL MASTER JUDGE: So let me
17 ask you this: Just assume for the sake of
18 argument that I rule in your favor Monday on
19 the privilege issue. You're inclined to go
20 ahead with her deposition on Tuesday and
21 Wednesday, correct?

22 MR. FORGE: Yes. Or, again, I'm
23 still happy to move it to the 30th and the
24 31st.

25 SPECIAL MASTER JUDGE: And for a

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1 continued deposition down the road, you would
2 not assume that you are entitled to that but
3 you would have to demonstrate good cause for
4 that, correct?

5 MR. FORGE: Absolutely. I made
6 that clear to counsel as well.

7 SPECIAL MASTER JUDGE: Okay.
8 Thank you.

9 MR. FORGE: I've never suggested
10 that we get an automatic do-over or to
11 reopen; but even that, I think your questions
12 and counsel's answers have revealed we're not
13 talking about an extreme burden. You know, I
14 threw out, and again counsel chose not to
15 engage whatsoever, but I said look, we'll be
16 talking about limited subjects, a limited
17 duration. We could do it remotely. It is,
18 if her deposition has to be reopened, it
19 would definitely be for, you know, no more
20 than one day, not even a full day.

21 I don't want to pre-argue that
22 because we're speculating about whether it
23 does need to be reopened but I'm simply
24 suggesting that this entire exercise is based
25 on their speculation that we are going to ask

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1 to reopen the deposition, and what I'm saying
2 is even that speculative argument is not some
3 sort of apocalyptic outcome.

4 There's nothing unduly burdensome
5 about a witness who was integrally involved
6 in this type of significant activity to
7 submit to a deposition for an additional few
8 hours.

9 Again I'm not trying to pre-argue
10 it. I'm just suggesting that even if the
11 worst case scenario by their argument comes
12 true, we're still not talking about a
13 tremendous burden.

14 So what it all comes back to is
15 the fact that this is their burden. We have
16 legal standards for a reason and I know that
17 you like to stick to the facts and stick to
18 the law, and that's the best way to proceed.
19 That's the only efficient way to get through
20 this.

21 They have not met their burden.
22 They have not met their burden of showing
23 that going forward after the decision has
24 been rendered is going to be somehow unduly
25 burdensome to her. They haven't shown any

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1 burden whatsoever to proceeding, so they
2 haven't met their burden at all.

3 Regarding the risk of us asking
4 to reopen the deposition, again, these are
5 all arguments they can make in opposition to
6 it but we can protect against pretty much
7 everything counsel raised if we move the
8 deposition to November 30th and December 1st,
9 she'll get the decision, everybody will get
10 the decision on Monday. That will give over
11 three weeks to do whatever counsel wants with
12 the information.

13 Likewise if we proceed on
14 Tuesday, we will have the decision and the
15 witness can answer all the questions that
16 she's entitled to answer given the decision.

17 So under either of those --

18 SPECIAL MASTER JUDGE: If I can
19 interrupt for a moment, I think one of her
20 concerns, if I am inferring correctly, is
21 that, you know, one side or the other has to
22 appeal the privilege issue. You know, if
23 they're going to be dissatisfied with my
24 decision Monday, they're likely to object.
25 Magistrate Judge Jolson and Chief Judge

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1 Marbley, what if they don't rule on it before
2 the November 30th date, where does that leave
3 everybody?

4 MR. FORGE: That's a great point
5 because that's what to me exposes what's so
6 problematic about making decisions based on
7 speculation because you could, first of all,
8 anybody could make that argument in any case
9 that oh, someone might want to reopen this
10 deposition down the road, therefore we should
11 not have the deposition.

12 Look, is it possible that someone
13 will object to your decision? Yes, it's
14 possible. Is it possible that we won't have
15 a decision within three weeks? Yes. Is it
16 possible we won't have a decision on the
17 objection within three months? Yes, that is
18 also possible. And that's why it's so
19 problematic to start making decisions when
20 we're heaping one level of speculation upon
21 another upon another.

22 We're just doing the best that we
23 can and we know for absolute certain that
24 Ms. Yeboah-Amankwah has extremely relevant
25 information that has, that predates the

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1 internal investigation so I know we're going
2 to make productive use of our time if we
3 depose her starting Tuesday or, you know, the
4 8th or if we start deposing her on November
5 30th. If we depose her in November of 2023,
6 I know we are going to make productive use of
7 everyone's time. We are not going to waste
8 her time. We are not going to waste our
9 time. It will be extremely productive.

10 Whether we wind up asking to
11 reopen to explore other issues post-dating
12 those events is really not what should be
13 controlling here. We can only deal with what
14 we know at the time; and what we know right
15 now is she has extremely relevant information
16 that predates the internal investigation and
17 that will almost certainly trigger the need
18 for follow-up discovery and so we really need
19 to take this deposition in November.

20 I'm not trying to draw a hard
21 line that it has to be Tuesday or bust. I'm
22 willing to wait until November 30th, but I
23 can send you the schedule. It's a very
24 crowded deposition schedule. That's the best
25 I can do and counsel hasn't pointed to any

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1 reason why that wouldn't at least help; and
2 so to the extent they want perfection, it
3 just doesn't exist in the law. We are never
4 going to have complete certainty.

5 SPECIAL MASTER JUDGE: Thank
6 you.

7 Brief rebuttal, if any.

8 MS. LAPE: Yeah, I'd just like
9 to respond to a couple points, please.

10 So counsel keeps suggesting that
11 I'm asking you to make decisions based on
12 speculation and that there's no indication
13 that they would even seek to reopen
14 Ms. Yeboah-Amankwah's deposition; but if you
15 look at the relief that they're seeking in
16 the motion to compel, they have asked as a
17 primary leaf in the motion to compel that
18 FirstEnergy must produce all previously
19 withheld documents and witnesses must answer
20 all questions past and future related to the
21 internal investigation.

22 So the relief they seek suggests
23 that if she is asked questions that are
24 protected as privileged during a deposition,
25 that they would then be able to and force her

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1 to ask -- or to answer those same questions
2 again. It's primary relief that they are
3 seeking in the motion to compel. This is not
4 speculative on my part thinking that they
5 might later seek to reopen the deposition.

6 Second, clearly we disagree with
7 all of the factual characterizations that
8 Mr. Forge made. She was not intimately
9 involved in any of the bad acts in this case.
10 She was not the highest ranking legal
11 employee, but I don't think that this is the
12 time to be arguing merits before you.

13 We're not asking you to
14 completely disrupt the discovery plan. We're
15 asking for a brief stay so that this
16 privilege issue can be resolved. As you
17 recognized, November 29th is not going to
18 finally resolve the privilege issue.

19 We are very flexible in
20 rescheduling dates. We are, we recognize
21 that a ruling on the privilege issue has
22 already been determined by the court, that it
23 will extend the fact discovery deadline and
24 certainly there will be opportunity for
25 Ms. Yeboah-Amankwah's complete testimony over

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1 both pre July 2020 actions and post 2020
2 actions including the internal investigation
3 should you issue the stay.

4 SPECIAL MASTER JUDGE: Thank
5 you.

6 Final question for you: Why wait
7 till yesterday to file?

8 MS. LAPE: Well, we had been
9 trying to reach plaintiffs counsel for
10 several weeks. Had attempted to have phone
11 conversations with them. We, initially they
12 indicated that they wanted to wait for you to
13 issue your ruling and then I believe we found
14 out on Monday that they plan to go forward.

15 This is all in Mr. Forge's email
16 exchange that he copied you on or that he
17 provided to you yesterday. We asked for the
18 alternative relief, said we would agree to
19 move forward if you would agree to this
20 limited relief and we had also reached out to
21 Jones' and Dowling's counsel as well to see
22 what their position would be. We heard back
23 from Jones' counsel yesterday morning and we
24 put together the motion for protective order
25 and got it on file as quickly as we could.

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1 Now, as far as why we waited from
2 the June time period, again we're not a party
3 to the case. We weren't involved in the back
4 and forth and didn't have knowledge quite
5 frankly of what the timeline was. We
6 believed it would be resolved before her
7 deposition and that it would not be an issue
8 and it wasn't until the deposition got closer
9 that we realized that it was in fact an
10 issue.

11 We also understood over that
12 period of time that there had been multiple
13 other depositions that had been moved for
14 this very reason and so it was quite frankly
15 a surprise to us in that plaintiffs would
16 want to move forward with this deposition
17 given this pretty significant privilege
18 dispute which really is at the heart of
19 what's discoverable with respect to our
20 client.

21 SPECIAL MASTER JUDGE: I
22 appreciate that.

23 Anything else?

24 MS. LAPE: No, your Honor.

25 SPECIAL MASTER JUDGE: Thank

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1 you. Thank you both.

2 The matter is taken under
3 advisement with a decision to be issued in
4 due course. I would anticipate issuing that
5 as part of the bundle on Monday.

6 I remind you that absent a stay,
7 that any orders of the Special Master go into
8 effect, they need to either be stayed by
9 myself, Magistrate Judge Jolson or Chief
10 Judge Marbley. So please keep that in mind
11 as you make your decisions.

12 I encourage the parties to keep
13 discussing any possible resolutions to this
14 matter between now and Monday. I anticipate
15 -- on Tuesday of this week I cleared, I
16 cancelled everything for today, tomorrow and
17 Saturday so I could spend the next four days
18 writing and get you guys more decisions than
19 you'll be happy with.

20 I anticipate there will be some
21 objections to that on Monday. We do not have
22 a status conference scheduled for next week;
23 however, I will be at a conference in
24 Cleveland. I can make myself available if
25 there are any issues that arise as a result

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1 of the decisions or as a result of the
2 proceeding with or declining to proceed with
3 the deposition scheduled for next week.

4 Anything else that we need to
5 discuss today?

6 MR. FORGE: Mr. Judge, can I
7 just ask, if I think I heard you correctly,
8 but the decision on this issue is going to
9 come out on Monday also?

10 SPECIAL MASTER JUDGE: Yes.

11 MR. FORGE: Okay. And the only
12 reason I ask that is because I, I know I'm
13 being guilty of pointing out the obvious but
14 there are a number, you know, we do have
15 several dozen people, I know you invited us
16 to continue discussing it. I'm fine, you
17 know. I don't want to inconvenience several
18 dozen people if, you know, November 30th
19 would be just fine. I put the offer out
20 there.

21 I don't know that it's, if that's
22 what it takes, I would rather agree to that
23 now than keep everybody in limbo until
24 Monday; but if there's any guidance you could
25 offer along those lines sooner than Monday, I

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1 would really appreciate it.

2 MR. McCAFFREY: Mr. Judge, John
3 McCaffrey on behalf of movant Michael
4 Dowling. To underscore Mr. Forge's position,
5 the deposition is scheduled to occur in
6 Cleveland starting Tuesday morning.

7 I know that we have counsel
8 coming in from out of town. They would, that
9 had may affect their ability to cancel
10 flights or make other arrangements. I just
11 wanted to make the Court aware of that.

12 SPECIAL MASTER JUDGE: I mean,
13 if no one has any objection, I can tell you
14 the result right now but I'm not going to be
15 able to get it written and filed before
16 Monday. Would that be helpful to everyone?

17 MR. McCAFFREY: That would be
18 helpful to Mr. Dowling.

19 UNIDENTIFIED SPEAKER: That would
20 be helpful to all counsel that have to travel
21 on Monday.

22 MS. LAPE: That would also be
23 helpful to us. I don't know that -- you
24 know, a decision on this without
25 understanding the decision on the overall

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1 privilege dispute is a little concerning
2 although, so I will say that we would be
3 amenable to the November 30th/December 1st
4 date as a alternative; although, you know,
5 obviously we'll have to see what the parties
6 do after your decision is made on the
7 underlying dispute.

8 SPECIAL MASTER JUDGE: I
9 understand.

10 Mr. Forge, response?

11 MR. FORGE: Sooner is better,
12 Mr. Judge. I would really appreciate it.
13 Not just personally, but for everybody else.

14 SPECIAL MASTER JUDGE: Yeah.
15 The decision on the underlying dispute will
16 be issued Monday. The decision, the written
17 decision on the motion for protective order
18 that was filed yesterday will be coming
19 Monday.

20 The decision that I will be
21 making that I can give you today is motion
22 denied.

23 MR. FORGE: Thank you.

24 SPECIAL MASTER JUDGE: So
25 proceed with the deposition next week if you

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1 are inclined. If not, kick it down the road.
2 I ask that you let me know either way just so
3 my own edification, but I will be getting
4 written orders out on, memorializing this
5 decision, explaining the rationale, and on
6 the all the other pending motions on Monday.

7 MR. FORGE: Thank you.

8 MS. LAPE: Thank you.

9 SPECIAL MASTER JUDGE: Anything
10 else from anyone we need to address?

11 MR. FORGE: Not from class
12 plaintiffs. Thank you.

13 SPECIAL MASTER JUDGE: All
14 right. Thank you all for your time. We will
15 reconvene in two weeks. If I'm needed before
16 then as a result of the decisions or
17 otherwise, please reach out by email or
18 telephone. Thank you.

19 And thank you for your efforts,
20 Pam. If anyone orders the transcript, it
21 need not be expedited but send a copy to me
22 as soon as it's available to you.

23 It's not necessary that I receive
24 one before Monday, although it's helpful but
25 not necessary. I took pretty copious notes

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1 while we were talking today. Thank you.

2 Have a good rest of the week.

3 - - - -

4 (Proceedings concluded at 11:46 a.m.)

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C E R T I F I C A T E

I, Pamela S. Greenfield, a Notary Public within and for the State of Ohio, do hereby certify that I attended the foregoing proceedings in their entirety, that I wrote the same in stenotypy, and that this is a true and correct transcript of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 2nd day of November, 2023.

Pamela S. Greenfield



Pamela S. Greenfield, CRR, RDR
Notary Public, State of Ohio
My commission expires July 2, 2028

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[additional - ballardspahr.com]

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[completely - defendant]

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